

1 KELLY A. JOHNSON  
Acting Assistant Attorney General  
2 Environment and Natural Resources Division  
United States Department of Justice  
3 Washington, D.C. 20530

4 W. BENJAMIN FISHEROW  
Deputy Chief, Environmental Enforcement Section  
5 ANN C. HURLEY  
ROBERT D. MULLANEY (State Bar No. 116441)  
6 Trial Attorneys  
Environment and Natural Resources Division  
7 Environmental Enforcement Section  
United States Department of Justice  
8 301 Howard Street, Suite 1050  
San Francisco, California 94105  
9 Telephone: (415) 744-6480  
Facsimile: (415) 744-6476  
10 E-mail: ann.hurley@usdoj.gov  
robert.mullaney@usdoj.gov

11 DEBRA WONG YANG  
United States Attorney  
12 LEON W. WEIDMAN  
Assistant United States Attorney  
13 Chief, Civil Division  
MONICA L. MILLER (State Bar No. 157695)  
14 Assistant United States Attorney  
15 Federal Building, Suite 7516  
300 North Los Angeles Street  
16 Los Angeles, California 90012  
Telephone: (213) 894-4061  
17 Facsimile: (213) 894-7819  
E-mail: monica.miller@usdoj.gov

18 Attorneys for Plaintiff United States of America  
19 (Additional attorneys on following page)

20 UNITED STATES DISTRICT COURT  
21 CENTRAL DISTRICT OF CALIFORNIA

22 UNITED STATES OF AMERICA )  
and SOUTH COAST AIR QUALITY )  
23 MANAGEMENT DISTRICT, )

24 Plaintiffs, )

25 v. )

26 ATLAS ROOFING CORPORATION, )

27 Defendant. )  
28

Case No.

COMPLAINT FOR CIVIL  
PENALTIES AND INJUNCTIVE  
RELIEF

1 CAROL ENGELHARDT (State Bar No. 045105)

2 Senior Deputy District Prosecutor

3 South Coast Air Quality Management District

4 21865 E. Copley Drive

5 P.O. Box 4940

6 Diamond Bar, California 91765-0940

7 Telephone: (909) 396-3450

8 Facsimile: (909) 396-2961

9 E-mail: cengelhardt@aqmd.gov

10 Attorney for South Coast Air Quality Management District

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1 Plaintiff United States of America, by the authority of the Attorney General  
2 of the United States and through the undersigned attorneys, acting at the request of  
3 the Administrator of the United States Environmental Protection Agency ("EPA"),  
4 and Plaintiff South Coast Air Quality Management District ("SCAQMD") hereby  
5 file this complaint and allege as follows:

6 **NATURE OF ACTION**

7 1. This is a civil action brought pursuant to Section 113(b) of the Clean  
8 Air Act ("CAA"), 42 U.S.C. § 7413(b), and Cal. Health & Safety Code §§ 42401  
9 and 42402.1 against Atlas Roofing Corporation ("Atlas" or "Defendant") for  
10 injunctive relief and assessment of civil penalties. Atlas violated the federally-  
11 approved and federally-enforceable California State Implementation Plan ("SIP"),  
12 SCAQMD permit conditions, the CAA, and SCAQMD Hearing Board's Orders at  
13 its expandable polystyrene ("EPS") foam block manufacturing, molding, and  
14 processing facility located at 14104 Towne Avenue in Los Angeles, California  
15 (the "Facility").

16 **JURISDICTION AND VENUE**

17 2. This Court has jurisdiction over the subject matter of this action  
18 pursuant to 28 U.S.C. §§ 1331, 1345, 1355, and CAA Section 113(b), 42 U.S.C.  
19 § 7413(b). In addition, this Court has supplemental jurisdiction over SCAQMD's  
20 claims under 28 U.S.C. § 1367 and Cal. Health & Safety Code §§ 42401 and  
21 42402.1. This Court also has jurisdiction over the parties to this action.

22 3. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b) and  
23 1395, and CAA Section 113(b), 42 U.S.C. § 7413(b), because the violations  
24 alleged herein occurred and/or are occurring at the Facility that is located in this  
25 district.

26 **AUTHORITY AND NOTICE**

27 4. Authority to bring this action is vested in the United States  
28

1 Department of Justice pursuant to CAA Section 305, 42 U.S.C. § 7605, and 26  
2 U.S.C. §§ 516 and 519. SCAQMD has the authority to bring this action pursuant  
3 to Cal. Health & Safety Code § 42403.

4 5. Notice of the commencement of this action was provided to the  
5 California Air Resources Board as required by CAA Section 113(b), 42 U.S.C.  
6 § 7413(b).

7 **DEFENDANT**

8 6. Defendant operates the Facility in Los Angeles, California under the  
9 name Falcon Foam, a Division of Atlas Roofing Corporation. Defendant is, and  
10 was at all time relevant hereto, a Mississippi corporation with its principal place of  
11 business in Meridien, Mississippi.

12 7. Defendant is a "person" as defined by CAA Section 302(e), 42 U.S.C.  
13 § 7602(e).

14 **STATUTORY AND REGULATORY BACKGROUND**

15 8. The Administrator of the EPA, pursuant to authority under CAA  
16 Section 109, 42 U.S.C. § 7409, promulgated National Ambient Air Quality  
17 Standards ("NAAQS") for certain criteria pollutants, including ozone. 40 C.F.R.  
18 § 50.9.

19 9. Pursuant to CAA Section 107(d), 42 U.S.C. § 7407(d), the  
20 Administrator promulgated lists of attainment status designations for each air  
21 quality control region ("AQCR") in every State. These lists identify the  
22 attainment status of each AQCR for each of the criteria pollutants. The ozone  
23 attainment status designations for the California AQCRs are listed at 40 C.F.R.  
24 § 81.305.

25 10. Ground-level ozone is formed when volatile organic compounds  
26 ("VOCs") react with oxides of nitrogen in the presence of sunlight. As a precursor  
27  
28

1 to ozone, VOCs are one of the regulated pollutants relating to the ozone NAAQS.  
2 40 C.F.R. Part 58, App. D, Section 2.5.

3 11. SCAQMD has primary jurisdiction over the Los Angeles Basin,  
4 including the City of Los Angeles, which has been designated as an extreme  
5 nonattainment area for the NAAQS for ozone. 40 C.F.R. § 81.305. CAA Section  
6 182(a)(2)(A), 42 U.S.C. § 7511(a)(2)(A), requires areas that are nonattainment for  
7 ozone to correct requirements in, or add requirements to, reasonably available  
8 control technology ("RACT") rules in the SIP.

9 12. On May 24, 1994, the State of California submitted SCAQMD Rule  
10 1175 as a corrected RACT rule for the Los Angeles Basin nonattainment area.  
11 EPA approved SCAQMD Rule 1175 into the federally enforceable SIP for the area  
12 on August 25, 1994. 59 Fed. Reg. 43,751.

13 13. SCAQMD Rule 1175 requires the owner or operator of a  
14 manufacturing facility of polymeric cellular (foam) products to limit VOC  
15 emissions during manufacturing and storage or install an approved emission  
16 control system to collect and control these VOC emissions.

17 14. SCAQMD Rule 1175(c)(2) states that the owner or operator of an  
18 EPS molding facility "shall demonstrate . . . that manufacturing and post-  
19 manufacturing emissions, assuming all the blowing agent is released from the  
20 product, are less than 2.4 lbs [of VOCs] per 100 lbs of raw material processed."

21 15. If the owner or operator of an EPS molding facility fails to  
22 demonstrate compliance with Rule 1175(c)(2), SCAQMD Rule 1175(c)(4)(B)  
23 requires the owner or operator to install and operate an "approved emission  
24 control system" within 12 months. Rule 1175 requires the emission collection  
25 system to collect at least 90 percent by weight of the manufacturing emissions.

26 16. Under CAA Section 113(a)(1), 42 U.S.C. § 7413(a)(1), when the  
27 Administrator finds that a person has violated a requirement of an applicable  
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1 permit or SIP, the Administrator shall notify that person, as well as the State in  
2 which the person operates, of such finding. The Administrator is then authorized  
3 under CAA Section 113(b), 42 U.S.C. § 7413(b), to commence a civil action for  
4 such permit or SIP violations at any time more than thirty days following the date  
5 of the Administrator's notification under CAA Section 113(a)(1).

6 17. Pursuant to CAA Section 113(b), 42 U.S.C. § 7413(b), EPA may  
7 commence a civil action for injunctive relief and civil penalties not to exceed  
8 \$25,000 per day for each violation of the CAA, including violations of an  
9 applicable SIP or permit. Pursuant to the Debt Collection Improvement Act of  
10 1996, Pub. L. 104-134, and 40 C.F.R. §§ 19.2, 19.4 (Table), civil penalties of up to  
11 \$27,500 per day per violation may be assessed for violations occurring between  
12 January 30, 1997, and March 15, 2004, and up to \$32,500 per day per violation for  
13 violations occurring after March 15, 2004.

#### 14 **GENERAL ALLEGATIONS**

15 18. Defendant operates a polymeric cellular (foam) products  
16 manufacturing, molding, and processing facility that is subject to the requirements  
17 of SCAQMD Rule 1175.

18 19. During the EPS block manufacturing process at its Facility,  
19 Defendant uses polystyrene beads as a raw material. The beads contain pentane,  
20 which is a VOC. Defendant's Facility emits pentane during the manufacturing  
21 process.

22 20. On July 13, 1999, SCAQMD issued a permit to construct to  
23 Defendant for a catalytic afterburner with a waste heat boiler to control VOC  
24 emissions from the Facility. The permit required Defendant to conduct a source  
25 test to demonstrate compliance with SCAQMD Rule 1175.

26 21. On October 13, 2000, SCAQMD issued a permit to Defendant that  
27 limited the pentane content of the polystyrene beads used at the Facility to no  
28

1 more than 4.52 percent. The permit also required that Defendant operate the  
2 catalytic afterburner at a temperature not less than 600 degrees Fahrenheit at the  
3 inlet to the catalyst.

4 22. On August 30, 2002, SCAQMD issued a revised permit to Defendant  
5 that changed the provision regulating the pentane content of the polystyrene beads  
6 to a requirement that beads with an initial pentane content of 5.5 percent or greater  
7 be aged a minimum of 12 hours prior to the molding process.

8 23. Pursuant to CAA Section 113(a)(1), 42 U.S.C. § 7413(a)(1), EPA  
9 issued a Notice of Violation to Defendant on March 15, 2004, for violations of the  
10 California SIP and the CAA at the Facility.

11 24. Atlas operated under a variance issued by the SCAQMD Hearing  
12 Board (the "Hearing Board"), Case No. 3529-7. In a March 9, 2004 Order, the  
13 Hearing Board included the following condition: "During the variance, the  
14 weighted average pentane content of the beads used by petitioner to manufacture  
15 expandable polystyrene (EPS) blocks shall not exceed 4.52% averaged over a  
16 calendar month." SCAQMD has jurisdiction to enforce the terms of the variance  
17 pursuant to Cal. Health & Safety Code §§ 41513, 42402.1.

18 25. After the termination of the Variance Case No. 3529-7, Defendant  
19 operated under the terms and conditions of an Order for Abatement issued by the  
20 Hearing Board (Case No. 3529-8) on March 24, 2005. Condition 5 of that Order  
21 required Defendant to continuously operate the existing catalytic afterburner at a  
22 temperature of not less than 600 degrees Fahrenheit at the inlet to the catalyst.  
23 SCAQMD has jurisdiction to enforce the terms of the Order for Abatement  
24 pursuant to Cal. Health & Safety Code §§ 42401, 42453.

25 **FIRST CLAIM FOR RELIEF**  
26 **(Failure to Demonstrate Compliance with Rule 1175)**  
27 **(Federal Claim Only)**

28 26. Paragraphs 1 through 23 are incorporated herein by reference as if

1 fully set forth below.

2 27. On or about September 27, 1999, Total Air Analysis Inc. performed a  
3 source test on behalf of Defendant to determine if the Facility was in compliance  
4 with the requirements of Rule 1175. This source test was invalid, however,  
5 because the results showed a collection efficiency of 177 percent. It is not  
6 physically possible to collect more than 100 percent of emissions.

7 28. Defendant has failed to demonstrate compliance with Rule 1175 since  
8 at least September 1999.

9 29. Unless enjoined by this Court, Defendant will continue to violate  
10 SCAQMD Rule 1175.

11 30. Under CAA Section 113(b), 42 U.S.C. § 7413(b), Defendant is  
12 subject to issuance of an injunction, requiring it to install an approved emission  
13 control system that complies with the provisions of SCAQMD Rule 1175.

14 31. Under CAA Section 113(b), 42 U.S.C. § 7413(b), and 40 C.F.R. Part  
15 19, Defendant is liable for a civil penalty of up to \$27,500 per day for each  
16 violation of SCAQMD Rule 1175 between September 1999 and March 15, 2004,  
17 and \$32,500 per day for violations after March 15, 2004.

18 **SECOND CLAIM FOR RELIEF**  
19 **(Failure to Comply with Permit Condition - Pentane Content)**  
20 **(Federal Claim Only)**

21 32. Paragraphs 1 through 23 are incorporated herein by reference as if  
22 fully set forth below.

23 33. In every month between January 2001 and September 2002,  
24 Defendant used polystyrene beads with a pentane content of more than 4.52  
25 percent in violation of its permit.

26 34. Under CAA Section 113(b), 42 U.S.C. § 7413(b), and 40 C.F.R. Part  
27 19, Defendant is liable for a civil penalty of up to \$27,500 per day for each  
28 violation of the permit condition requiring it to limit the pentane content of the



1 polystyrene beads to 4.52 percent.

2 **THIRD CLAIM FOR RELIEF**  
3 **(Failure to Comply with Permit Condition - Emission Control Device)**  
4 **(Federal Claim Only)**

5 35. Paragraphs 1 through 23 are incorporated herein by reference as if  
6 fully set forth below.

7 36. Between January 2002 and December 2004, Defendant operated the  
8 catalytic afterburner at its Facility at a temperature less than 600 degrees  
9 Fahrenheit on at least 307 days, and therefore violated its permit on each of these  
10 days.

11 37. Unless enjoined by this Court, Defendant will continue to operate its  
12 emission control device in a manner not in compliance with its permit.

13 38. Under CAA Section 113(b), 42 U.S.C. § 7413(b), Defendant is  
14 subject to issuance of an injunction, requiring it to operate its emission control  
15 device in compliance with the terms of its permit.

16 39. Under CAA Section 113(b), 42 U.S.C. § 7413(b), and 40 C.F.R. Part  
17 19, Defendant is liable for a civil penalty of up to \$27,500 per day for each  
18 violation of SCAQMD Rule 1175 between October 13, 2000, and March 15, 2004,  
19 and \$32,500 per day for violations after March 15, 2004.

20 **FOURTH CLAIM FOR RELIEF**  
21 **(Violation of Hearing Board Variance)**  
22 **(SCAQMD Claim Only)**

23 40. Paragraphs 1 through 25 are incorporated herein by reference as if  
24 fully set forth below.

25 41. In a variance proceeding, the SCAQMD Hearing Board issued an  
26 Order on March 9, 2004, requiring that the weighted average pentane content of  
27 the beads used by defendant not exceed 4.52 percent averaged over a calendar  
28 month.

42. Defendant failed to comply with the Order's limitation in multiple

1 months, including, but not limited to, the months of March, April, and May of  
2 2004.

3 43. Pursuant to Cal. Health and Safety Code § 42402.1, Defendant is  
4 liable to SCAQMD for a civil penalty of \$25,000 for each day it violated the Order  
5 of the SCAQMD Hearing Board.

6 **FIFTH CLAIM FOR RELIEF**  
7 **(Violation of Hearing Board Order of Abatement)**  
8 **(SCAQMD Claim Only)**

9 44. Paragraphs 1 through 25 are incorporated herein by reference as if  
10 fully set forth below.

11 45. The SCAQMD Hearing Board issued an Order for Abatement on  
12 March 24, 2005, requiring Defendant to continuously operate the existing catalytic  
13 afterburner at a temperature of not less than 600 degrees Fahrenheit at the inlet to  
14 the catalyst.

15 46. On numerous days after March 24, 2005, Defendant violated this  
16 condition for operation of the catalytic afterburner.

17 47. Pursuant to Cal. Health and Safety Code § 42401, Defendant is liable  
18 to SCAQMD for a civil penalty of \$25,000 for each day it violated the Order of  
19 the SCAQMD Hearing Board.

20 **REQUEST FOR RELIEF**

21 WHEREFORE, Plaintiffs respectfully request that the Court grant  
22 the following relief:

23 A. Assess a civil penalty against Defendant of \$27,500 per  
24 day for each violation as alleged in the first, second and third claims for relief in  
25 this complaint that took place through March 15, 2004, and assess a civil penalty  
26 against Defendant of \$32,500 per day for each violation as alleged in the first and  
27 third claims for relief in this complaint that took place after March 15, 2004;

28 B. Assess a civil penalty against Defendant of \$25,000 per

1 day for each violation as alleged in the fourth and fifth claims for relief in this  
2 complaint;

3 C. Issue an order requiring Defendant to install an approved emission  
4 control system to comply with the provisions of SCAQMD Rule 1175 and to take  
5 all appropriate and necessary measures to ensure compliance with all applicable  
6 emission limitations required by SCAQMD Rule 1175 and permits issued by  
7 SCAQMD to the Facility;

8 D. Award the United States and SCAQMD their costs and fees  
9 incurred in this action; and

10 E. Grant such other relief as is deemed just and proper.

11 Respectfully submitted,

12 For the United States of America:

13 KELLY A. JOHNSON  
14 Acting Assistant Attorney General  
15 Environment and Natural Resources  
16 Division  
United States Department of Justice

17 Dated: \_\_\_\_\_

18 W. BENJAMIN FISHEROW  
19 Deputy Chief  
Environmental Enforcement Section

20 Dated: \_\_\_\_\_

21 ANN C. HURLEY  
22 ROBERT D. MULLANEY  
23 Trial Attorneys  
Environmental Enforcement Section

24 OF COUNSEL:

25 ANN LYONS  
26 Assistant Regional Counsel  
27 U.S. Environmental Protection  
Agency, Region IX  
75 Hawthorne Street  
San Francisco, California 94105

For South Coast Air Quality Management  
District:

Dated: \_\_\_\_\_

\_\_\_\_\_  
CAROL ENGELHARDT  
Senior Deputy District Prosecutor